No. _____

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In The Supreme Court of the United States

SHELDA HARRIS BANNON,
as parent and natural guardian of her daughters
Sharah Harris and Brittni Harris,

Petitioner,

v.

SCHOOL DISTRICT OF PALM BEACH COUNTY,
a body corporate, and ED HARRIS, individually
and in his capacity as principal of
Boca Raton Community High School,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Richard H. McDuff
Counsel of Record
JOHNSON, ANSELMO,
MURDOCH, BURKE,
PIPER & MCDUFF, PA
The International Building
2445 E. Sunrise Boulevard
Suite 1000
Ft. Lauderdale, FL 33304
(954) 463-0100
Participating Attorney for
The Rutherford Institute

John W. Whitehead
Douglas R. McKusick
THE RUTHERFORD INSTITUTE
1440 Sachem Place
Charlottesville, VA 22906
(434) 978-3888

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

I. Did school officials engage in viewpoint discrimination in violation of the First Amendment when they required that religious references be removed from murals painted by a student on construction barriers at a public school as part of a project meant to allow for student expression and school beautification?

II. Does the First Amendment allow school officials to discriminate on the basis of viewpoint in censoring student speech that also is considered "school-sponsored" speech under *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)?

III. Did the Court of Appeals err in holding that a mural project, which was intended to beautify a school and serve as a forum for student expression, was "school-sponsored" speech subject to regulation on grounds reasonably related to pedagogical interests under *Hazelwood*?

PARTIES TO THE PROCEEDINGS

All parties to the proceedings before the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida are listed in the caption to this Petition.

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OPINIONS BELOW

The order and judgment of the United States District Court for the Southern District of Florida is not reported and is set forth in the Appendix beginning at A-26. The opinion of the United States Court of Appeals for the Eleventh Circuit is reported as *Bannon v. School District of Palm Beach County*, 387 F.3d 1208 (11th Cir. 2004), and is set forth in the Appendix beginning at A-1. The order denying the Petitioner's Petition for Rehearing En Banc is not reported and is set forth in the Appendix beginning at A-24.

STATEMENT OF JURISDICTION

The judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, which is the subject of the instant Petition, was entered on October 12, 2004. A Petition for Rehearing En Banc was filed by the Petitioner on November 1, 2004, which was denied in an order entered by the Court of Appeals on December 9, 2004 (A-24). This Court has jurisdiction to review the judgment below under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. I provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. XIV, § 1, provides as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In late January and early February 2002, Boca Raton Community High School, a public high school in Palm Beach County, Florida, was undergoing renovations. Plywood panel barriers placed around construction areas during construction were unsightly so the school administration invited students to paint murals on these barriers as a beautification project. Respondent Ed Harris, principal of the high school, approved a project in which students or staff members were permitted to paint the panels. The project was conducted as a fundraiser for the Student Council. Students were to provide their own murals, and the only instructions given by school officials were that the murals not be profane or offensive and that the murals include the students' own expression. Students were not required to present their proposed murals for prior approval

and were permitted to express themselves freely in their artwork.

Sharah Harris, then a senior at the high school and a member of the Fellowship of Christian Athletes Club, decided to participate in the project, along with other members of the Club. On a Saturday afternoon, Sharah and other Club members painted several murals with religious messages. In one mural, the students wrote "Because He ♥ed, He Gave," and had a cross in the background. Another read, "Jesus has time for you; do you have time for Him?" And a third read, "God Loves You. What Part of Thou Shalt Not Didn't You Understand? God."

The following Monday morning, Respondent Ed Harris saw the murals and determined that Sharah had participated in painting them. Principal Harris and Cathy Roberts, the teacher supervising the project, went to Sharah's class, called her out, and instructed Sharah to paint over the murals to remove the religious references. In accordance with their directives, Sharah painted over the murals after school that day to remove religious symbols and language, replacing the references to God and Jesus with neutral pronouns such as "He" and "Him." Sharah was only required to remove religious references from her murals. Petitioner Shelda Harris Bannon, Sharah's mother, thereafter complained to the Respondents about their order that the religious references in the murals be covered up. Petitioner argued that this constituted unacceptable censorship and had subjected Sharah to humiliation and public ridicule because of Sharah's religious beliefs. However, the Respondents took no action in response to Petitioner's complaints.

As a result, Petitioner filed this action in the United States District Court for the Southern District of Florida, alleging causes of action against the Respondents under 42 U.S.C. § 1983 for deprivations of her daughters' rights under the First Amendment.[1] The District Court had jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343. After discovery was conducted, the Respondents filed a motion for summary judgment. The District Court granted the Respondents' motion entering final judgment that the Petitioner take nothing (A-34). In an accompanying order explaining its reasoning, the District Court ruled that the mural project was not a public or limited public forum for expression (A-30). Instead, it determined that the project was school-sponsored speech over which educators may exercise greater editorial control (A-31). The District Court held that the decision to eliminate Sharah's religious references was related to a pedagogical interest of avoiding disruption from religious debate and of disassociating the school from a religious viewpoint (A-31, -32).

Petitioner appealed this judgment to the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment in an opinion and judgment entered October 12, 2004. In its opinion, the Court of Appeals rejected the idea that the mural project was a public or limited public forum. It determined that the school had retained editorial control over the murals because (1) Respondent Harris instructed that a mural not be profane or offensive, (2) Roberts was supposed to supervise the project, and (3) even though Respondent Harris told students they

[1] A claim also was asserted against Joe Sabia, coach of the high school's girls basketball team, but the parties stipulated to a dismissal of this claim.

should express themselves, he never said the murals were a forum for expressing religious or political views (A-8).

Because no public forum was involved, the Court of Appeals concluded that the murals constituted school-sponsored speech, and any restriction on that speech had to be judged under the standards of *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). It recognized that the *Hazelwood* decision establishes the standards for judging restrictions on student speech only where the expression occurs in the context of a "curricular activity."(A-10). Opining that this Court has defined "curricular activity" "broadly" (A-10), the Court of Appeals held that the mural project was a curricular activity because (1) Harris and Roberts supervised the project, and (2) "the beautification project was designed to impart particular knowledge and skills to student participants and audiences[.]" (A-11).

The Court of Appeals then rejected the Petitioner's claim that the Respondents' conduct constituted viewpoint discrimination. Although it agreed with the Petitioner that *Hazelwood* does not authorize the censorship of expression on the basis of viewpoint (A-12), it determined that the censorship at issue here was content-based, not based on viewpoint (A-12). Sharah's murals were "inherently religious messages," and "[s]ince the school did not permit any student in the context of a curricular activity to communicate such messages, it restricted speech on the basis of content, not viewpoint." (A-14, -15). The Court concluded that the school's censorship of Sharah's murals was reasonably related to a legitimate pedagogical interest in avoiding disruption of the school's learning environment, and so did not violate the First Amendment (A-15).

In a concurring opinion, Judge Black expressed disagreement with the majority's conclusion that the censorship of Sharah's murals was not viewpoint discrimination. Judge Black wrote that this Court's decisions in *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), and *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993), "compel us to conclude that this was an instance of viewpoint-based discrimination, not content-based discrimination." (A-17). However, Judge Black agreed with the result reached by the majority, reasoning that viewpoint-based discrimination is allowed when school-sponsored speech is involved (A-22).

Petitioner timely filed a petition for en banc review, but the request for rehearing was denied (A-24).

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT AMONG THE CIRCUITS ON WHETHER VIEWPOINT DISCRIMINATION IS JUSTIFIED WITH RESPECT TO SCHOOL-SPONSORED SPEECH.

The crucial determination of the Court of Appeals allowing it to reject the Petitioner's First Amendment claim was that the Respondents did not engage in viewpoint discrimination when they required Sharah to remove religious references from the murals she painted. Significantly, the appellate panel was not unanimous on this point; Judge Black found that this Court's decisions in *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), and *Lamb's Chapel v. Center Moriches*